



City of Muscatine



AGENDA ITEM SUMMARY

DATE:10-15-20

City Council

STAFF

Andrew Fangman, Assistant Community Development Director

SUBJECT:

Resolution Approving Lease of a Portion of the Undeveloped Lombard Street Right of Way
Adjoining 1009 E. 6th Street

EXECUTIVE SUMMARY:

Midwest Property Holdings LLC, whom recently purchased 1009 E. 6th Street, (the old Weber Button) is requesting that they City enter into a long-term lease for the portion of the Lombard Street right of way, which adjoins this property.

STAFF RECOMMENDATION

Staff recommends approval.

BACKGROUND/DISCUSSION

In April of 2020, Midwest Property Holdings LLC, purchased 1009 E. 6th St from Weber and Sons Button Company, and has since been renovating this property. As part of this renovation Midwest Property Holdings LLC, desires to construct a canopy type structure, in order to provide for a protected storage area for snow removal equipment, on an existing concrete pad that adjoins the east side of the existing building. However, the east wall of the existing building is concurrent with the property line, and the concrete slab in question is located with the Lombard Street right of way. As such in order for Midwest Property to erect the desired structure they will need to lease this right of way. The City previously leased this right of way to the former owners of 1009 E. 6th Street. The existing improvements in this right of way were made by the previous owner under a lease that expired in 1976. The term of the lease would be for 3 years, and they payment would be an upfront lump sum payment of \$250.

CITY FINANCIAL IMPACT

Payment of \$250 lease.

ATTACHMENTS

1. Memo
2. Resolution Approving Lease
3. Proposed Lease

RESOLUTION NO. 2020-0340

**A RESOLUTION APPROVING A LEASE AGREEMENT WITH MIDWEST
PROPERTY HOLDINGS LLC FOR A SMALL PORTION OF LOMBARD
STREET RIGHT OF WAY THAT ADJOINS 1009 EAST 6TH STREET**

WHEREAS, the City of Muscatine in cooperation with Midwest Property Holdings LLC, is proposing a 3-year lease agreement for a small portion of Lombard Street right of way that adjoins 1009 East 6th Street; said right of way that would be subject to the proposed lease being more particularly described as:

That portion of Lombard Street in the City of Muscatine, Iowa, between the north line of Sixth Street and the north alley line of Blocks One Hundred Eleven and One Hundred Twelve (111 & 112) of the Original Town, lying north of the Chicago, Rock Island and Pacific Railroad right-of-way.

and;

WHEREAS, as a public hearing must be conducted for any lease agreement that involves more than a three (3) year lease of real property; and public hearing must be conducted for any lease agreement that involves more than a three-year lease of real property; and

WHEREAS, said public hearing was held on October 15, 2020; and

WHEREAS, an acceptable lease has been received from the Midwest Property Holdings LLC, attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that the lease agreement, attached as Exhibit A with Midwest Property Holdings LLC is approved upon execution of said lease agreement.

PASSED, APPROVED AND ADOPTED this 15th day of October, 2020.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Diana L. Broderson, Mayor

Attest:

Carol Webb, City Clerk

GROUND LEASE OF CITY RIGHT-OF-WAY

The City of Muscatine, Iowa, an Iowa municipal corporation (hereinafter referred to as “Lessor” or “City”), hereby agrees to lease to Midwest Property Holdings LLC, an Iowa limited liability company, its successors and assigns (hereinafter referred to as “Lessee”), the following described premises located in the City of Muscatine, Iowa:

That portion of Lombard Street in the City of Muscatine, Iowa, between the north line of Sixth Street and the north alley line of Blocks One Hundred Eleven and One Hundred Twelve (111 & 112) of the Original Town, lying north of the Chicago, Rock Island and Pacific Railroad right-of-way (the “Premises”).

1. **Term; Possession.** The term of this Lease shall be three (3) years, commencing on the 16th day of October 2020, and terminating on the third (3rd) anniversary thereafter, unless sooner terminated by the Lessor or Lessee as hereinafter provided. Lessee shall be entitled to possession on the first day of the lease term and yield possession to Lessor at the termination of this lease. SHOULD LESSOR BE UNABLE TO GIVE POSSESSION ON SAID DATE, LESSEE’S ONLY DAMAGES SHALL BE A PRO RATA ABATEMENT OF RENT.
2. **Rent.** Lessee agrees to pay as rent for the Premises the total sum of Two Hundred and Fifty Dollars (\$250.00). Such amount shall be paid in one lump sum payment on or before October 30, 2020.
3. **Premises; Inspections; As Is.** It is the responsibility of the Lessee, at the Lessee’s sole expense, to satisfy itself, prior to the execution of this Lease, as to the title and condition of the Premises. Accordingly, the taking of possession of the Premises by the Lessee shall be conclusive evidence that the Premises was in satisfactory condition when possession was taken by Lessee.
4. **Notices.** All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served by certified mail, return receipt requested, to Lessor, City of Muscatine at 215 Sycamore Street, Muscatine, Iowa 52761, and to Lessee at the address of the Registered Agent shown by the Iowa Secretary of State, or to such other address as Lessor or Lessee may by writing to the other so designate. Notice to Lessee may also be served by personal delivery.
5. **Use by Lessee.**
 - 5.1 The Lessee may use the Premises for any lawful purpose allowed within the zoning district in which the Premises is located. The Lessee shall not use or permit the Premises or any part of the Premises to be used for any unauthorized or unlawful purpose.
 - 5.2 Lessee shall be responsible for the cost of all labor and materials furnished or provided in connection with the construction any improvements upon the Premises and shall not permit the filing of any mechanics liens against the Premises, title to which at all times remains in the City. If any lien is filed against the Premises, Lessee must discharge the lien or provide adequate bond or other surety in a manner and amount reasonably satisfactory to the City within thirty (30) days after the filing of the lien.
6. **Title to Improvements.** Lessee may, at its own expense make alterations and improvements to the Premises as necessary for the conduct of its business. Lessee shall be owner of any improvements made by Lessee during the lease term. Lessee specifically agrees that any and all improvements, except, equipment and trade fixtures installed, upon the Premises shall become the property of the Lessor upon termination of this Lease, except as otherwise noted in this Lease.

7. Public Utilities.

7.1 Lessee shall pay for all utilities and services which may be used on the Premises.

7.2 The installation and repair of public utilities on the Premises without compensation to the Lessee is authorized, provided that any such installation or repair shall be designed and undertaken in such manner to limit interference with any improvements made the Lessee.

7.3 The Lessee at all times shall permit any utility or its agents to enter into and upon the Premises for the purpose of installing, maintaining, or repairing any public utility infrastructure that has been installed within the Premises, subject to Section 7.1.

8. Lessor's Right of Entry. The Lessee upon 48 hours' notice to Lessee (except in the event of emergency) shall permit Lessor or its agents to enter into and upon the Premises for the purpose of inspecting the same.

9. Approvals. Except to the extent contrary to the terms of this Lease, nothing in this Lease shall be construed to exempt the Lessee from full compliance with any requirements imposed by the City Code or other applicable laws, rules, and regulations regarding any permits or approvals necessary for the anticipated use of the premises by Lessee, including but not limited to building permits, zoning or conditional use permits as may be legally required. By executing this Agreement, Lessor does not waive any of its regulatory authority over activities occurring on or improvements to the Premises.

10. Maintenance.

10.1 Lessee, at its sole cost and expense, shall maintain, repair, and replace all improvements made by the Lessee on the Premises.

10.2 Lessee, at its sole cost and expense shall at all times keep all portions of the Lessor's property in good order, condition, and repair and in a clean, sanitary, and safe condition and in accordance with any and all applicable laws.

10.3 Lessee shall not cause damage or injury to the Premises, or permit any waste or nuisance on the Premises.

10.4 Lessee is solely responsible for snow removal, mowing and weed control on the Premises.

10.5 In the event the Premises are not maintained as required by this Lease, the City may provide notice to the Lessee as set forth in Section 4 herein, giving the Lessee ten (10) days to cure the deficiencies. In the event Lessee fails to cure within such timeframe, the City may cause the Premises to be maintained and the cost thereof will be billed to Lessee.

11. Indemnification. Lessee, solely with respect to its use of the Premises, agrees to indemnify, protect, defend, and hold harmless Lessor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Lessor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any negligent act or omission of Lessee, its agents, servants or employees.

12. Assignment of Lease by Lessee. This Lease and the Premises hereunder are assignable by the Lessee without Lessor's consent to the following: (1) any person or business entity which is a parent, subsidiary or affiliate of Lessee; (2) any person or business entity which controls or is controlled by or under a common control with Lessee; and (3) any person or business entity which is merged or consolidated with Lessee. Any other assignment of this Lease and the Premises hereunder by the Lessee shall not occur without the Lessor's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall notify Lessor in writing of the name and address of any assignee. Each and every covenant and agreement herein contained shall extend to and be binding Lessee's assigns.

13. Insurance. Lessee shall maintain comprehensive general liability insurance insuring Lessee against any liability arising out of this Lease, or the use, occupancy, or maintenance of the Premises and all areas appurtenant to the Premises. Such insurance shall be in the amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence for property damage, bodily injuries, or deaths of persons occurring in and about the Premises. The insurance policy shall insure the hazards of the Premises and operations conducted in and on the Premises, independent contractors, contractual liability (covering the indemnity included in this Lease) and shall name the City as an additionally insured party.

Any policy issued to the City providing duplicate or similar coverage shall be deemed excess over Lessee's policies. Lessee waives any subrogation rights against the City on all claims and insurance policies. Lessee shall not use or permit the Premises to be used in any manner that would void Lessee's or the City's insurance or increase the insurance risk.

14. Default; Remedies.

14.1 Default. The occurrence of any one or more of the following events, if not timely cured, shall constitute a default on the part of the Lessee:

- 14.1.1 the Lessee fails to pay when due any rental or any other sum of money payable hereunder on the date due;
- 14.1.2 the conduct of any business or performance of any acts on the Premises not specifically authorized in the Lease;
- 14.1.3 the Lessee abandons, deserts or vacates the Premises;
- 14.1.4 the Lessee sells, assigns, subleases, transfers, or mortgages this Lease except as otherwise permitted;
- 14.1.5 the Lessee fails to carry the insurance required under this Lease, any insurance required under this Lease is cancelled, terminated, expires, or is reduced or materially changed so as to not comply with this Lease;
- 14.1.6 the Lessee fails to discharge, by payment or bond, any lien or encumbrance placed upon the Premises or improvements in violation of this Lease; or
- 14.1.7 the Lessee breaches or fails to comply with any other term, provision, covenant or condition of this Agreement.

Any or all of the foregoing, if not timely cured, shall hereinafter be referred to as "Events of Default." Upon the occurrence of any of the above Events of Default, the Lessor shall give written notice of such default to Lessee at the address set forth in this Lease. The effective date of notice shall be the date that the notice is personally served on the Lessee or, if sent by certified mail, return receipt requested, the date of the return receipt. If the default is for failure to pay rent or any other sum of money when due, then the Lessee shall have sixty (60) days after the effective date of notice to cure. If the default is for any other Event of Default then the Lessee shall have thirty (30) days after the effective date of notice to cure, or if such failure by its nature cannot reasonably be corrected within such 30-day period, then the Lessee shall have a reasonable time after the effective date of notice to cure but in no event longer than one hundred twenty (120) days.

14.2 Remedies. If the Lessee fails to cure the default within the time allowed in Section 14.1, Lessor may at the Lessor's option elect one or more of the following remedies:

- 14.2.1 without releasing the Lessee from its obligations under this Lease, attempt to cure the default. The City may enter the Premises for such purpose and take such action as it deems desirable or appropriate to cure the default;
- 14.2.2 sue for payment of the unpaid rents or other payments as they become due;
- 14.2.3 subject to the terms of Section 16 below, terminate the Lease by giving Lessee written notice of termination and work a forfeiture thereof, in which event every covenant, term and condition on the part of the Lessor to be performed, fulfilled and kept, shall terminate as to all purposes whatsoever, and in such event, it shall be lawful for the Lessor to re-enter, repossess and enjoy the Premises and Lessor's interest therein; or
- 14.2.4 exercise any other right or remedy, legal or equitable, including injunctive relief.

14.3 Expenses. The Lessee shall fully reimburse and compensate the Lessor upon demand for any costs and expenses incurred in connection with any cure, correction or repair undertaken by Lessor, which sums shall be deemed to be additional rent hereunder.

14.4 No Waiver. Lessor's acceptance of payments or other moneys following any event of default hereunder shall not be construed as the Lessor's waiver of such event of default unless the event of default is the delinquency in the payment of the amount accepted. No forbearance by the Lessor of action upon any violation or breach of any of the terms, provision and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions and covenants herein contained. Forbearance by the Lessor to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any such remedy.

15. Effect on Utilities; Easements. Upon termination or expiration of the Lease for any reason, any private utilities constructed on the Premises as permitted under Section 5.2 of this Lease, and any building appurtenances extending onto the Premises as permitted under Section 5.2 of this Lease, shall be permitted to remain as easements on the Premises so long as they remain in good working order, do not endanger public, health, safety or welfare, and do not interfere with necessary improvements to any public infrastructure.

16. Lessee Termination of Lease. Lessee may terminate this Lease at any time upon sixty (60) days prior written notice to the Lessor. In the event of termination under this Section, if Lessee is otherwise in compliance with all other terms of this Lease, Lessee will be entitled to receive a refund of the Rent amount equal to the prorated net present value based upon the remaining Term of the Lease.

17. Surrender. Upon the termination of this lease, Lessee will surrender the Premises to Lessor in good and clean condition, except for ordinary wear and tear or damage without fault or liability of Lessee.

18. Covenants with the Land. All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of Lessor, Lessee and their respective assigns and successors in title.

19. Certification. Lessee certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury

Department as a terrorist, “Specially Designated National and Blocked Person” or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Lessee hereby agrees to defend, indemnify and hold harmless Lessor from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney’s fees and costs) arising from or related to any breach of the foregoing certification.

20. **Captions and Governing Law.** The captions included herein are for reference only and should not be used in construing any of the terms hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

Two Signature Pages Follow

Signature Page – Midwest Property Holdings, LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____)
)
COUNTY OF _____) ss

This record was acknowledged before me on this _____ day of _____, 2020,
by _____ as _____ of
Midwest Property Holdings LLC.

Notary Public in and for the State of _____